THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.1389 of 2007

Dated 26-04-2007

Between:

Sri Dasari Sreedhar,

…Petitioner

And

Government of Andhra Pradesh
Rep. by its Secretary to Govt., and others

…Respondents

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THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

W.P.No.1389 of 2007

JUDGMENT:

The petitioner is an Advocate practicing, in the Courts at

Tenali. The post of Additional Public Prosecutor, for the Court of Principal Assistant Sessions Judge, Tenali, fell vacant. Steps were initiated under Section 24 of the Cr.P.C., to fill that post.

In consultation with the District & Sessions Judge, Guntur, the District Collector, Guntur, forwarded a panel of names, to be considered for appointment, as Additional Public Prosecutor, for the Court of Principal Assistant Sessions Court, Tenali.

The 1st respondent issued orders in G.O.Rt.No.1569, Law (L.A.&J.Cts.A2) Department dated 07-11-2006, appointing the petitioner as Additional Public Prosecutor for the said Court. However, within two months, the 1st respondent issued orders in G.O.Rt.No.73, Law (LA&J. Courts A2) Department, dated 10-01-2007, cancelling the orders in G.O.Rt.No.1569, and appointing the

3rd respondent as Additional Public Prosecutor for the said Court. The same is challenged in this writ petition.

Petitioner submits that his appointment was cancelled at the instance of the 4th respondent, flouting all norms and settled principles of law. He contends that neither he was issued any notice before his order of appointment was cancelled, nor any reasons were mentioned in the order. It is urged that the impugned order is the result of political interference.

The 1st respondent filed a counter affidavit. The fact that the petitioner was appointed as Additional Public Prosecutor through orders in G.O.Rt.No.1569, dated 07-11-2006, is admitted. However, it is stated that the order was not communicated, and on a reassessment of merit, the 3rd respondent was appointed through the impugned order. The allegation that the impugned order is issued at the instance of the 4th respondent is denied. It is also pleaded that no

rights have accrued to the petitioner, since the order of his appointment was not communicated to him. The 3rd respondent filed counter affidavit on the same lines.

The 4th respondent filed a counter affidavit, denying the allegations against him.

Sri E.V. Bhagiratha Rao, learned counsel for the petitioner submits that, once an order of appointment is issued in favour of the petitioner, duly following the procedure prescribed under Section 24 of Cr.P.C., there was absolutely no justification for the 1st respondent in cancelling the same, even before the petitioner took charge. He contends that the whole exercise smacks of arbitrariness.

Sri A. Satya Prasad, learned Special Government Pleader, Sri C. Ramachandra Raju, learned counsel for the 3rd respondent, and Sri Satyanarayana Nimmagadda, learned counsel for the 4th respondent, submit that though the G.O., was issued appointing the petitioner as Additional Public Prosecutor, neither it was communicated to him, nor he has taken the charge. They contend that the petitioner cannot be said to have derived any right under the order, which was not communicated to him, at all. It is also submitted that it is the prerogative of the 1st respondent, to choose its counsel, for various Courts, and the petitioner cannot insist that he must be appointed as Public Prosecutor. Reliance is placed upon certain decided cases.

On expiry of the term of the Additional Public Prosecutor, for the Court of Principal Assistant Sessions Judge, Tenali, the Collector and District Magistrate, Guntur, initiated the process under Section 24 of Cr.P.C. She addressed a letter dated 28-12-2005, to the District and Sessions Judge, Guntur, to forward a panel of names of the Advocates

for consideration. The Sessions Judge, in turn, addressed a letter, dated 28-12-2005, to the Principal Assistant Sessions Judge, Tenali, to forward names. The latter forwarded a panel of five names, including the name of the petitioner and the 3rd respondent. After further examination, the District and Sessions Judge, recommended the same names. The Collector and District Magistrate, however added one more name and got the antecedents of all the candidates verified through the Superintendent of Police. On finding that there is nothing adverse against them, she forwarded the panel to the 1st respondent.

After examination of the panel, the 1st respondent issued orders in G.O.Rt.No.1569, dated 07-11-2006, appointing the petitioner, the only SC category candidate in the panel; as the Additional Public Prosecutor. Even before the petitioner had assumed charge, the 1st respondent passed the impugned order, cancelling the orders in G.O.Rt.No.1569, and appointing the 3rd respondent as the Additional Public Prosecutor. This was not preceded by any notice, to the petitioner.

The contention of the respondents that no rights have accrued to the petitioner, in view of the fact that
the G.O.Rt.No.1569 was not communicated; cannot be accepted. It is not as if a private communication, between various departments, was kept in the records, and that the petitioner is claiming any rights basing on the same. The Supreme Court in ***State of West Bengal v. M.R. Mondal***[1] held that un-communicated notes in the Government files do not give rise to any rights in favour of citizens. The G.O. issued in exercise of powers under Section 24 of the Cr.P.C. stands on a different footing. Prolonged correspondence and verification

preceded. It is an exercise under a statute. The petitioner would certainly derive rights out of it.

The matter needs to be examined from another angle. Had the 1st respondent appointed the 3rd respondent straightaway, no prejudice, as such, can be said to have been caused to the petitioner, because no one can insist that he alone must be appointed as the Public Prosecutor. But, once the petitioner was appointed as Public Prosecutor, and the same is cancelled, even before he takes charge, it would be a reflection on his personality. If valid reasons existed for such a course, the 1st respondent was under the obligation, to hear the petitioner, before having recourse to such drastic action.

In view of the extraordinary step, that was taken *vis-à-vis* the petitioner, this Court directed the production of record. It reveals that up to the extent of G.O.Rt.No.1569, dated 07-11-2006 was issued, the flow of events was very smooth and unobstructed. However, a note that gave rise to the issuance of the impugned G.O., emanated from the Minister for Commercial Taxes, Law and Courts. It was observed that, representations were received to the effect that the 3rd respondent is more efficient than the petitioner. Neither the source of information is available, nor the manner in which this assessment was undertaken, is evident. The note was approved, and ultimately the impugned order came to be passed.

It is true that the Government has the prerogative to appoint its own counsel, either as Government Pleader, or Public Prosecutor, and no one can insist that he alone must be appointed (*See* ***Shrilekha Vidyarthi v. State of U.P.***[2]*)*. But, having appointed the petitioner, it was not open to them to cancel the appointment, contrary to law.

If the impugned order did not give rise to any right to the petitioner, there was no necessity to cancel it. Once the Government had decided to cancel the order of appointment of the petitioner, it was incumbent upon it, to hear the petitioner.

This Court is compelled to observe that the whole exercise, undertaken by the Government, in issuing the impugned order; does not accord with the settled norms and principles of law.

The writ petition is accordingly allowed, and the impugned order is set aside. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.26-04-2007.

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[1] (2001) 8 SCC 443

[2] (1991) 1 SCC 212